IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 1007 of 2001
(Old No. 278 of 1997)

Vijendra Prasad
S/o late Lila Dhar Prasad,
R/o Village-Kotiyalgaon,
Patti, Baragadi, Tehsil Bhatwari,
District Uttarkashi.

……. Plaintiff - Appellant

Versus

1. Union of India through Secretary
   Ministry of Defence, Govt. of India,
   New Delhi.
2. State of U.P. through
   The Collector, Uttarkashi.
3. Principal of Nehru Mountaineering Institution,
   Uttarkashi, District Uttarkashi.

……Defendants-Respondents

Mr. Narayan Singh Negi, learned counsel for the appellant.

Hon'ble Prafulla C. Pant, J.

This appeal is preferred by the plaintiff against the judgment and decree dated 01.05.1997, passed by learned District Judge, Uttarkashi in Original Suit No. 16 of 1996.

2) Brief facts of the case are that the plaintiff filed a suit for permanent injunction restraining the defendants from making any construction over plot No. 300 of Village Kotiyalgaon, Patti –Baragadi, Tehsil Bhatwari, District Uttarkashi. As per the plaint case, the plaintiff's father got the land in question from Zamindar on payment of Rs. 280/- as nazarana. The old numbers of the plot No. 300 were khasra Nos. 1,2,3,4 and 5. Plaintiff is in possession of

the land in question and has raised constructions over it in the year 1975-76. Earlier, in the year 1980, Lekhpal made a complaint against the plaintiff under the U.P. Public Premises (Eviction of Unauthorized occupants) Act, 1972 for his eviction from the plot in question. However, the said proceedings terminated in favour of the plaintiff vide order dated 17.05.1985, passed by the learned District Judge setting aside the order of the prescribed authority. As Defendant No. 1, Union of India is raising a boundary wall in plot No. 300, as such, the plaintiff after serving the notice under Section 80 of the Code of Civil Procedure, 1908, filed the present suit.

3) Defendants contested the suit before the trial court and pleaded that the total area of the plot No. 300 is 0.803 hectares, which is recorded in the name of the State. It was further pleaded that an area measuring 0.784 of the plot was under the ownership of the Government of India and rest of the area i.e. 0.019 hectares was in the ownership of the State Government. It is further pleaded before the trial court by the respondent that the plot Nos. 290, 291, 294, 295, 296, 297, 298, 299 and 301 were acquired in accordance with law. It is further alleged that plaintiff is not concerned whatsoever with the land in suit.

4) Learned trial court, after perusing the pleadings, framed following issues:

1. *Whether, the plaintiff is in possession of whole plot of khasra No. 300 on the basis of lease deed dated 06.10.1953?*

2. *Whether, the plaintiff constructed his house on the disputed land in 1975-76?*
3. *Whether, the defendant is interfering in the alleged possession of the plaintiff over the disputed land?*
4. *To what relief, if any, is the plaintiff entitled?*

5) After recording the evidence and hearing the parties, learned trial court decided the issue No. 1 and 2 with the finding that plaintiff is in possession over plot No. 300 but only in the area measuring 11¼ nail of land, wherein he has got his house constructed. With regard to issue No. 3, it is mentioned that the defendants are not interfering with the possession of the land over which the plaintiff's house is constructed. With these findings, the suit was dismissed by the trial court.

6) I heard learned counsel for the appellant.

7) Admittedly, the plaintiff was found by the trial court in possession of 11¼ nail of land of plot No. 300. It is also established from the record that the total area of the land was 40 nalis. It has also been proved from the evidence on record, that the plaintiff's house is already situated over 11¼ nail of land, in respect of which learned trial court has observed that the defendants are not interfering. The argument of the plaintiff, after his possession was found since 1975-76, is that the trial court should have decreed the suit atleast for the relief that the defendants be restrained from interfering in the possession of the plaintiff over 11¼ nail of land over which his house is constructed without due process of law. To that extent, in the opinion of

this Court, the trial court has erred in law. Accordingly, this appeal deserves to be allowed partly.

7) For the reasons, as discussed above, the appeal is partly allowed. The impugned judgment and decree is set aside to the extent that the plaintiff - appellant is entitled for relief of injunction in respect of 11¼ nail of land over which, admittedly, his house was constructed. Accordingly, the Original Suit No. 16 of 1996 is decreed to the extent that the defendants are restrained from interfering in peaceful possession of the plaintiff over 11¼ nail of plot No. 300, except in accordance with due process of law. In respect of rest of the relief, the suit shall remain dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt. 10th March, 2006
H. Negi